

AIR TRANSPORT SERVICES

Agreement signed at Brussels April 5, 1946, with annex and protocol of signature

Entered into force April 5, 1946

60 Stat. 1585; Treaties and Other
International Acts Series 1515

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE BELGIAN GOVERNMENT RELATING TO AIR SERVICES BETWEEN THEIR RESPECTIVE TERRITORIES

The Government of the United States of America and the Belgian Government,
considering

—that the possibilities of commercial aviation as a means of transport have greatly increased,
—that it is desirable to organize the international air services in a safe and orderly manner and to further as much as possible the development of international cooperation in this field, and
—that the Agreements hitherto contracted between the two governments with respect to the operation of air services should be replaced by a more general agreement in harmony with the new conditions of air transport, have appointed their representatives, who, duly authorized, have agreed upon the following:

ARTICLE I

The Contracting Parties grant to each other the rights specified in the Annex hereto for the establishment of the international air services set forth in that Annex, or as amended in accordance with Article XII of the present Agreement (hereinafter referred to as the “agreed services”).

ARTICLE II

a) The agreed services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, on condition that:

(1) the Contracting Party to whom the rights have been granted shall have designated an air carrier or carriers for the specified route or routes.

(2) the Contracting Party which grants the rights shall have given the appropriate operating permission to the air carrier or carriers concerned pursuant to paragraph (b) of this Article which (subject to the provisions of Article VI) it shall do with the least possible delay.

b) The designated air carrier or carriers may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it or they is or are qualified to fulfill the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operations of commercial air carriers.

ARTICLE III

a) The charges which either Contracting Party may impose or permit to be imposed on the designated air carrier or carriers of the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft employed in similar international air services.

b) Fuel, lubricating oils and spare parts introduced into, or taken on board aircraft in, the territory of one Contracting Party by, or on behalf of, any designated air carrier of the other Contracting Party and intended solely for use by the aircraft of such carrier shall be accorded, with respect to customs duties, inspection fees and other charges imposed by the former Contracting Party, treatment not less favorable than that granted to national air carriers engaged in international air services or such carriers of the most favored nation.

c) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of any designated air carrier of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights within that territory.

ARTICLE IV

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operation of the agreed services. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another state.

ARTICLE V

a) The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the other Contracting

Party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first party.

b) The laws and regulations of each Contracting Party as to the admission to, sojourn in and departure from its territory of passengers, crew and cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs and quarantine, shall be observed.

ARTICLE VI

Each Contracting Party reserves the right to withhold or revoke a certificate or permit to an air carrier designated by the other Contracting Party in the event that it is not satisfied that substantial ownership and effective control of such carrier are vested in nationals of either Contracting Party, or in case of failure by that carrier to comply with the laws and regulations referred to in Article V hereof, or otherwise to fulfill the conditions under which the rights are granted in accordance with this Agreement and its Annex.

ARTICLE VII

In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties will consult regularly with a view to assuring the observance of the principles and the implementation of the provisions outlined in the present Agreement and its Annex.

ARTICLE VIII

For the purpose of the present Agreement and its Annex:

a) The term "territory" as applied to each Contracting Party shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, mandate, or trusteeship of such Contracting Party;

b) The term "aeronautical authorities" shall mean in the case of the United States the Civil Aeronautics Board and in the case of Belgium "l'Administration de l'Aéronautique Civile" and in both cases any person or body authorized to perform the functions presently exercised by the above mentioned bodies;

c) The term "international air services" shall have the meaning specified in Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944.¹

ARTICLE IX

Except as otherwise provided in this Agreement or its Annex, any dispute between the Contracting Parties relating to the interpretation or application of this Agreement or its Annex which cannot be settled through consultation,

¹ TIAS 1591, *ante*, vol. 3, p. 969.

shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organization, in accordance with the provisions of Article III, Section 6 (8) of the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944,² or its successor.

ARTICLE X

The present Agreement supersedes the Provisional Agreement concluded between the two Contracting Parties by an exchange of notes signed February 1, 1946.³

The present Agreement shall in no way affect the provisions of the Agreement concluded between the Belgian Congo Colony and a United States air carrier signed August 22, and September 15, 1941,⁴ or any amendments thereof.

ARTICLE XI

This Agreement and all relative contracts shall be registered with the Provisional International Civil Aviation Organization set up by the Interim Agreement on International Civil Aviation signed at Chicago December 7, 1944, or its successor.

ARTICLE XII

a) This Agreement, including the provisions of the Annex thereof, will come into force on the day it is signed.

b) Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement or its Annex which may be desirable in the light of experience. If a multilateral air convention enters into force in relation to both Contracting Parties such consultations shall take place with a view to amending the present Agreement or its Annex so as to conform to the provisions of such a convention.

c) Except as otherwise provided in this Agreement or its Annex, if either of the Contracting Parties considers it desirable to modify the terms of the Annex to this Agreement it may request consultation between the aeronautical authorities of both Contracting Parties, such consultation to begin within a period of sixty days from the date of the request. Any modification in the Annex agreed to by said aeronautical authorities shall come into effect when it has been confirmed by an exchange of diplomatic notes.

d) When the procedure for a consultation provided for in paragraph b) of the present Article has been initiated, either Contracting Party may at any time give notice to the other of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organization, or its successor.

² EAS 469, *ante*, vol. 3, p. 934.

³ TIAS 1515, *ante*, p. 612.

⁴ Not printed here.

This Agreement shall terminate one year after the date of receipt of the notice to terminate by the other Contracting Party unless the notice is withdrawn by Agreement before the expiration of this period. In the absence of acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the Provisional International Civil Aviation Organization, or its successor.

Done at Brussels, this fifth day of April, 1946, in duplicate in the English and French languages, each of which shall be of equal authenticity.

For the Government of the United States of America:

ALAN G. KIRK [SEAL]

For the Belgian Government:

P. H. SPAAK [SEAL]

ANNEX

SECTION I

The Government of the United States of America grants to the Belgian Government the right to conduct air transport services by one or more air carriers of Belgian nationality designated by the latter country on the routes, specified in the Schedule attached, which transit or serve commercially the territory of the United States of America.

SECTION II

The Belgian Government grants to the Government of the United States of America the right to conduct air transport services by one or more air carriers of United States nationality designated by the latter country on the routes, specified in the attached Schedule, which transit or serve commercially Belgian territory.

SECTION III

One or more air carriers designated by each of the Contracting Parties under the conditions provided in this Agreement will enjoy, in the territory of the other Contracting Party, rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail at the points enumerated and on each of the routes specified in the attached Schedule at all airports open to international traffic.

SECTION IV

It is agreed between the Contracting Parties:

a) That the two Governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles; and to

stimulate international air travel as a mean of promoting friendly understanding and good will among peoples and insuring as well the many indirect benefits of this new form of transportation to the common welfare of both countries;

b) That in the operation by the air carriers of either Contracting Party of trunk services described in the present Annex, the interests of the air carriers of the other country shall, however, be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same route.

c) That the air transport service offered by the carriers of both countries should bear a close relationship to the requirements of the public for such services.

d) That the services provided by a designated air carrier under this Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such air carrier is a national and the country of ultimate destination of the traffic, and that the right of the air carriers of either country to embark and to disembark at points in the territory of the other country international traffic destined for or coming from third countries at a point or points specified in the attached Schedule, shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity shall be related:

1°) to traffic requirements between the country of origin and the countries of destination;

2°) to the requirements of through airline operation and

3°) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

SECTION V

a) The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service.

b) The rates to be charged by the air carriers of either Contracting Party between the points in the territory of the United States and points in Belgian territory referred to in this Annex shall, consistent with the provisions of the present Agreement and its Annex, be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under the present Annex, within the limits of their legal powers.

c) The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association (hereinafter called "IATA"), for a period of one year beginning in

February 1946, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval by the Board.

d) Any rate proposed by the air carrier or carriers of either Contracting Party shall be filed with the aeronautical authorities of both Contracting Parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both Contracting Parties.

e) The Contracting Parties agree that the procedure described in paragraphs f, g and h of this Section shall apply:

1°) if during the period of the Civil Aeronautics Board's approval of the "IATA" traffic conference machinery, either any specific rate agreement is not approved within a reasonable time by either Contracting Party or a conference of "IATA" is unable to agree on a rate, or

2°) at any time no "IATA" machinery is applicable, or

3°) if either Contracting Party at any time withdraws or fails to renew its approval of that part of the "IATA" traffic conference machinery relevant to this Section.

f) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if in the judgment of the aeronautical authorities of the Contracting Party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic.

If one of the Contracting Parties on receipt of the notification referred to in paragraph d) above is dissatisfied with the rate proposed by the air carriers of the other Contracting Party it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each Contracting Party will exercise its statutory powers to give effect to such Agreement.

If agreement has not been reached at the end of the thirty day period referred to in paragraph d) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its application, go into effect provisionally pending the settlement of

any dispute in accordance with the procedure outlined in paragraph h) below.

g) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied, with any rate proposed by the air carrier or carriers of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty day period referred to in paragraph d) above, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

h) When in any case under paragraph f) and g) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the air carrier or carriers of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional International Civil Aviation Organization or to its successor for an advisory report, and each Party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

SECTION VI

a) For the purpose of the present Section, the term "Transshipment" shall mean the transportation by the same carrier of traffic beyond a certain point on a given route by different aircraft from those employed on the earlier stages of the same route.

b) Transshipment when justified by economy of operation will be permitted at all points mentioned in the attached Schedule in territory of the two Contracting Parties.

c) However, no transshipments will be made in the territory of either Contracting Party which would alter the long range characteristics of the operation or which would be inconsistent with the standards set forth in this Agreement and its Annex and particularly Section IV of this Annex.

SECTION VII

Changes made by either Contracting Party in the routes described in the attached Schedule except those which change the points served by these

airlines in the territory of the other Contracting Party shall not be considered as modifications of the Annex. The aeronautical authorities of either Contracting Party may therefore proceed unilaterally to make such changes, provided, however, that notice of any change is given without delay to the aeronautical authorities of the other Contracting Party.

If such other aeronautical authorities find that, having regard to the principles set forth in Section IV of the present Annex, interests of their air carrier or carriers are prejudiced by the carriage by the air carrier or carriers of the first Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country, the authorities of the two Contracting Parties shall consult with a view to arriving at a satisfactory agreement.

• SECTION VIII

After the present Agreement comes into force, the aeronautical authorities of both Contracting Parties will exchange information as promptly as possible concerning the authorizations extended to their respective designated air carriers to render service to, through and from the territory of the other Contracting Party. This will include copies of current certificates and authorizations for service on the routes which are the subject of this Agreement and, for the future, such new authorizations as may be issued together with amendments, exemption orders and authorized service patterns.

SCHEDULE

(Points on any of the routes may, at the option of the air carrier, be omitted on any or all flights.)

1. *Route to be served by the air carriers of Belgium:*

Belgium to New York by a direct route via the British Isles and other intermediate points; in both directions.

2. *Routes to be served by the air carriers of the United States:*

A. The United States to Brussels by a direct route via the British Isles and other intermediate points, and then via intermediate points to India and beyond; in both directions.

B. The United States via the Azores and Dakar (and via South America) and intermediate points to Leopoldville and beyond via intermediate points to the Union of South Africa; in both directions.

PROTOCOL OF SIGNATURE

It appeared in the course of negotiations leading up to the conclusion of the Agreement on air services between the territory of the United States of America and Belgian territory signed at Brussels today that the representatives of the two Contracting Parties were in agreement on the following points:

1°) The air carriers of the two Contracting Parties operating on the routes described in the Annex of said Agreement shall enjoy equal opportunity for the operation of the said routes.

2°) To the extent that the carrier or carriers of one of the Governments is temporarily unable to take advantage of such opportunities as a result of the war, the situation will be mutually examined by the two governments for the purpose of aiding as soon as possible the said air carrier or carriers to increasingly make their proper contribution to the services contemplated.

3°) Such airports as may have been constructed on Belgian territory and financed in whole or part by the Government of the United States and which will be open to international civil traffic will be open to the duly authorized air carriers of the United States who will enjoy thereon, on a non-discriminatory basis, rights of transit and non-traffic stop. They will likewise enjoy there the commercial rights which may be granted them by the present Agreement or any other agreement now in force or later concluded.

4°) In order to give effect to the provisions of Section V (f) of the Annex to the Agreement, the executive branch of the United States Government will use its best efforts to secure legislation empowering the aeronautical authorities of the United States to fix fair and economic rates for international services and to suspend proposed rates, in the same manner as the Civil Aeronautics Board is qualified to act with respect to air transportation within the United States.

5°) It is recognized that the determination of tariffs to be applied by an air carrier of one Contracting Party between the territory of the other Contracting Party and a third country is a complex question, the overall solution of which cannot be sought through consultation between only two countries. It is noted, furthermore, that the method of determining such tariffs is now being studied by the Provisional International Civil Aviation Organization. It is understood under these circumstances:

a) That, pending the acceptance by both parties of any recommendations which the Provisional International Civil Aviation Organization may make after its study of this matter, such tariffs shall be subject to consideration under the provisions of Section IV(b) of the Annex to the Agreement.

b) That in case the Provisional International Civil Aviation Organization fails to establish a means of determining such rates satisfactory to both Contracting Parties, the consultation provided for in Article XII(b) of the Agreement shall be in order.

6°) It is understood that the United States air carrier or air carriers operating on the route listed in the Annex as Route n° 2 B will afford reasonable service at Léopoldville.

Done at Brussels, this fifth day of April, 1946, in duplicate in the English and French languages, each of which shall be of equal authenticity.

For the Government of the United States of America,

ALAN G. KIRK [SEAL]

For the Belgian Government:

P. H. SPAAK [SEAL]